IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 34 of 1993 AND 35 OF 1993.

in

COMPANY PETITIONNo 90 of 1986

For Approval and Signature:

Hon'ble Mr.JUSTICE N.J.PANDYA AND

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

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2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

od 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

CENTRAL BANK OF INDIA

Versus

AMBALAL SARABHAI ENTER. LTD.

Appearance:

MR RAJNI H MEHTA for Petitioners

MR SM SINGHI for Respondent No. 1

MR SN SOPARKAR for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 27/02/97

COMMON JUDGEMENT

1. The appellants are Central Bank of India and Bank of Baroda. These two appeals are preferred against the order passed on 24th December, 1987 by the Company Judge of this Court by which he has disposed of Company Petitions Nos. 90/86 and 91/86. These two appeals are preferred against one and the same order and they are also heard together with the consent of the parties and they are being disposed of by this common judgment.

2. Respondent Ambalal Sarabhai Enterprises (hereinafter referred to as " A S E ") was carrying out at all material time various business and for that purpose had organized itself into various divisions. One of the said division was called SWASTIK HOUSE HOLD AND NATURAL PRODUCTS (hereinafter referred to as " SHIP "). SHIP was enjoying various credit facilities from appellants- Bank of Baroda and Central Bank of India. Various credit facilities in consideration of various securities including guarantee being given by Companies of ASE group. SHIP was engaged in manufacturing shops, detergents and other similar products.Said SHIP was amalgamated with ASE by order of the Bombay High Court on 11th July, 1984 and, thereafter, it had become the division of ASE. Appellants had accepted the said amalgamation on various terms including ASE giving guarantees, the credit facilities were transferred and confirmed and granted to ASE for its SHIP division, On execution of various documents and tripartie agreement of hypothecation on 29th December, 1984.On 30th June, 1984, the dues of the respondents were exceeding Rs.10,00,00,000/- (Rupees Ten Crores).The said SHIP after its amalgamation with ASE was named as WHITCO and WHITCO was subsequently changed to SARABHAI SURFACTANTS LTD. (to be referred to as SSL) was owning more than Rs.10,00,00,000/- (Rupees Ten Crores) to the petitioners on 29th December, 1984. The Company Petitions Nos. 90/86 and 91/86 were filed by ASE by showing WHITCO LTD. which is now known as SSL as the respondent No.1 and Sarabhai Electronics Ltd. as Respondent No.2 the petitioner had come before the court with a case that there was an agreement between the petitioner and the respondent No.2 that ASE wanted to transfer its SHIP to SSL and it had also agreed to transfer its electronic undertakings to SSL. It was the contention of the petitioner-company that as it has engaged in diversion activities, restructuring of business is sought to have ideas of specialization and to keep space with the fast moving technologies and to have some collaboration with

international leaders who specialize in one or other fields and who find it difficult to enter into collaboration with the petitioner because it is engaged in diverse fields. Therefore, as per the said Arrangement/amalgamation scheme, petitioner intends to transfer SHIP which was manufacturing toiletries, detergent cosmetics, industrial packing and related ancillary operations to respondent No.1 WHITCO which also manufactures and sell detergents and which is now known as SARABHAI SURFUCANTANTS LTD (in short SSL). It further intends to transfer technical undertakings to respondent No.2 Sarabhai Electronics Ltd. which was at the time of filing of petition functioning as financing company and the aforesaid arrangement was approved in the meetings of Board of Directors of the company and the respondent-company held separately on 31st October, 1985 and had decided to propose the scheme of arrangement to reorganize the activities of the petitioner through media of 3 co-operative entities. After approving the draft in the meeting of the Board of Directors as the petitioner-company held on 16th January, 1986, the petitions by way of Company Petition No.35/86 and 36/86 were filed and as per the order passed in those petitions on 25th March, 1986, Then the meetings were held of the equity share holders, preference share holders and thereafter, the present petitions 90/86 and 91/86 were filed.

3. When the petitions came up for admission, the court had directed issuing of necessary advertisement in the newspapers and notice was also issued to the Central Government. In pursuance of the said advertisement, the State Bank of India- one of the creditors of WHITCO which is at present known as SSL had filed an affidavit in reply opposing the said petition. It was also opposed by Ceiba Geigy Ltd. and Polyolefins Ltd. But it seems that after they had filed their affidavit in reply opposing the petition, the original petitioner-respondent No.1 ASE had working out with them and consequently they had filed statement saying that they are withdrawing their objections. But the advocate for the Central Government had raised objections for approving the said amalgamation and arrangement scheme. The learned Single Judge had negatived all the contentions raised on behalf of the Central Government and he also came to the conclusion on the strength of the affidavit filed by the petitioner-company that the secured creditors of the petitioner-company have agreed to the proposals for the scheme of arrangement though no specific statement of the secured creditors mentioning therein that they had agreed to the proposals of scheme of arrangement was produced

before him. He therefore, came to the conclusion that there was proper compliance of the statutory requirements by the petitioners and he therefore, was pleased to accord sanction to the said arrangement and amalgamation scheme by his order dated 24th December, 1987.

4. The present appellants who are the secured creditors of the WHITCO Company Ltd. and now known as SWASTIK SURFACTANTS LTD. have preferred the present appeals. Their main contention is that though there was sufficient material before the learned Single Judge to hold that there was no satisfaction of the statutory requirement for according the sanction, the learned Single Judge has erred in holding that there was compliance with the statutory requirements by the petitioners. It is also the contention of the appellants that respondent No.1 ASE had filed a false affidavit saying that an arrangement had been arrived at between the appellants and the petitioners and that the appellants had no objection for according sanction to the said arrangement and amalgamation scheme. The respondent ASE never intended to work out any arrangement to satisfy the dues of the appellants and after getting the approval and sanction to the said arrangement and amalgamation scheme, the respondent No.1 ASE has backed out from the statements made by him before the Company Judge on affidavit stating therein that an arrangement has been worked out with the appellants. It is the contention of the appellants that the respondent No.1 had played a fraud on the Single Judge in getting the approval and sanction for the said arrangement and amalgamation scheme. They therefore seek setting aside of the order passed by the learned Single Judge on 24th December, 1987 by which the approval and sanction has been granted to the arrangement and approval scheme.

5. The respondents have contended before us that the subsequent events after the passing the order of approval and sanction of the arrangement scheme on 24th December, 1987 could not be taken into consideration by this court. If the appellants wants to contend that the order in question has been obtained by fraud, then they could have to go for a separate civil suit and they cannot raise this contention in the appeal. It is also contended that the learned Single Judge has not committed any error of either of law or fact so as to interfere with the order passed by him.

6. Therefore, on the submissions made before him the points which arise for consideration and findings thereon for the reasons hereinafter stated are as under:

POINTS FINDINGS

1. Whether the learned Single Judge was right in holding that the petitioner has fulfilled all the statutory requirements for getting the order of approval and NO. sanction to the said arrangement and amalgamation scheme ?
2. Whether in view of the material which was on record of the learned Single Judge ought not to have approved and sanctioned the scheme in question ? YES

3. Whether is it open for the appell- ants to raise a contention in appeal that the order passed by the learned Single Judge was obtained by the respondents by playing fraud ? YES

4. Whether the present appeals will have to be allowed ? YES

7. Before proceeding to consider various contentions raised by the appellants as well as the respondents, it would be just & proper to consider provisions of Section 391 under which the original applications were filed and allowed.The said Section 391 is running as under :

Power to compromise or make arrangements with creditors and members

(1) Where a compromise or arrangement is proposed
(a) between a company and its creditors or any class of them ; or

(b) between a company and its members or any class of them ;
the Court may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourth in value of the creditors, or class of creditors, or members, or class of members as the case may be, present and voting either in person or, where proxies are allowed (under the rules made under section 643), by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or, in the case of a company which is being wound up, on the liquidator and contibutories of the company :

(Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.)

(3) An order made by the Court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy in respect of which default is made.

(6) The Court may, at any time after an application has been made to it under this

section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.

(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.

The provisions of sub-section (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application.

If the above provisions of Section 391 are considered, then it would be quite clear that the provisions of sub-section 2 of section 391 is very crucial and the compliance of the said sub-section 2 of Section 391 is essence of determination of petition filed under Section 391. Provisions of Section 391 (2) caste a duty on the court to see that all the material facts relating to the company such as latest financial position of the company, latest auditor's report and the accounts of the company are disclosed by the company who had filed theapplication Proviso to Section 391 (2) being in negative form is mandatory and making all the disclosure as required by the proviso being condition precedent to court exercising the jurisdiction for sanction of the scheme unless that condition is fully established, the court will have no jurisdiction to sanction the scheme. Where applications under section 391 (1) does not disclose the material such as latest audited balance sheet and other details of the working of the company, the scheme of the arrangement with the creditors not being given, the application cannot be sanctioned.

8. It is an admitted fact that in the main petition, the petitioner had not disclosed the names of the present appellants as the secured creditors of the petitioners. They were not made specifically parties to the proceeding. No doubt, a public notice was issued and inspite of the same, the present appellants had not appear. But that conduct of the appellants will not absolve the original petitioners- respondents in these appeals from fulfilling their statutory obligation created by proviso of sub-section 2 of section 391. It is an admitted fact that the State Bank of India, Ceiba

Geigy Ltd. and Polyolefins Industries Ltd. had filed affidavit in reply opposing the original petitions. No doubt, the said three creditors of the respondent on their dues being satisfied had subsequently given up their opposition. But merely because of satisfaction of their dues, they happen to give up their opposition, the facts stated by them on affidavit while opposing the petition could not be defaced or ignored. Their affidavit in reply was a material in the proceeding and the same material ought to have been considered by the learned Company Judge. The conduct of those three creditors on subsequently withdrawing their opposition on account of satisfaction of their dues would at the most create an estoppel or bar against them from sticking to original opposition, but that would not erase and devalue the affidavit in reply filed by them. In any case the contents therein which are pertaining to the fullfilment of the statutory obligation and duty of the petitioner ought to have been considered by the Company court.

9. In Company Petition No.91 of 1986 at Annexure 32 there is affidavit of D.R. Sampathkrishnan, Manager, Commercial & Industrial Division, State Bank of India, Baroda. In this affidavit in reply in para No. 10 he has stated as under :

> The Petitioner Company's annual report for the year 1984-85 is enclosed to the petition and I say that in the year ending 30th April, 1985, the Petitioner Company showed a net loss together with deficit carried forward to the tune of Rs.145.97 lacs. I say that perusal of the Auditor's Report of the Petitioner Company would clearly show that the Petitioner Company has under-stated the loss for the year ended 30-4-1985 and over-stated the value of fixed assets as of the said date. I say that the Petitioner company has not provided for the future liability for gratuities, which is estimated by the Auditor of the Petitioner Company at Rs.2,37,824/- as of 30th April, 1985. I say that in view of the losses incurred by the Petitioner Company, the Petitioner Company has not created any reserve for investment for investment allowances, which amounts to Rs.1,86,753/-. I say that with regard to the depreciation on assets, which is being mentioned by me hereinabove, the Petitioner Company has not considered shifted allowances and if such a considered shift allowances and if such a consideration would have been made, the

depreciation for the year ended 30th April, 1985 would have been more by Rs.5,52,703/-. I say that as far as the increase in rates of depreciation on buildings, plant and machinery with effect from 2-4-1983, the specified period which is recommended by the Department of Company Affairs and the Institute of Chartered Accountants of India, the Petitioner Company has not revealed the correct information with regard to depreciation and thus the Petitioner Company has not adhered to the recommendations made by the Department of Company Affairs and the Institute of Chartered Accountants of India. I say that if the depreciation be provided as per this recommendation, the charge for the depreciation would have been more by Rs.59,85,796/-. I say that thus the Petitioner Company, as I already stated hereinabove, under-stated the losses for the year by more than Rs. 60 lacs and over-stated the value of fixed assets by not providing for the depreciation as stated hereinabove.

Then he has further stated in para : 15 as under :

I say that if the present scheme is approved by this Hon'ble Court, it would amount to a creditor taking over the liabilities of his debtor and in the process would adversely affect the security of the bank. I further say that the State Bank of India held a hypothecation charge over the book debts/receivable of the Petitioner Company. I further say that the State Bank of India will be adversely affected not only with respect to the said security but also with respect to the said security but also with respect to the bills dishonoured by the Swastik Undertaking of ASE. I say that, in nut-shell, ASE as a Guarantor is liable for the payment of the amount due and payable by the Petitioner Company in respect of the banking facilities accorded to the Petitioner Company. I say that Swastik division of ASE is also liable to make payments for the bills accepted by them and on the basis of such acceptance the bank has discounted the said bills in favour of WHITCO Ltd. I say that even looking to the internal transactions between WHITCO Ltd. on the one

hand, and Swastik division of ASE, it is abundantly clear that taking over of Swastik division of ASE by WHITCO Limited as well as the State Bank of India. I say that there is no information given at all as to the real financial position of Swastik division of ASE. I say that unless the said financial position is made clear before this Hon'ble Court, it will not be possible for this Hon'ble Court to grant any sanction to any such scheme, by which, the Swastik division of ASE is to be taken over by WHITCO Ltd. I further say that even the so-called consideration which is agreed to be paid under the scheme by WHITCO Ltd. to ASE, can also not be justified unless all the facts and the financial picture of WHITCO Ltd. as well as Swastik division of ASE and ASE are clearly placed before this Hon'ble Court. I say that by taking over the Swastik division of ASE by WHITCO Ltd. even the amount due and payable to WHITCO Ltd. by Swastik division of ASE would be wiped out and the bank, as a secured creditor would be seriously handicapped and affected. I say that the bookdebts are also a part of the security in respect of the financial assistance given by the Bank by way of cash credit to the Petitioner Company. I say that in absence of all the important financial information, the State Bank of India is unable to evaluate the scheme and even before this Hon'ble High Court, the Petitioner Company should have disclosed all the relevant financial information which it has not done. In absence of all the relevant financial information, the true effect of the scheme cannot be assessed.

(Emphasis are supplied by us)

In para No.19 and 20 of his affidavit he has deposed as under :

19. With reference to paragraph 2(a) of the said scheme, I say that no particulars about the debts, liabilities, dues and obligations of the Swastik Undertaking of ASE as on the relevant date have been given in this petition. I say that in absence of this important and relevant information, it will not be possible to judge the

true effect of the said scheme. I crave leave to file a detailed affidavit as and when necessary information is disclosed before this Hon'ble Court.

20. I say that as far as the Petitioner Company is concerned, the information disclosed in this petition is only upto 30-4-1985. There is no information as of 1-7-1985 with respect to the Petitioner Company, whereas with respect to the Swastik Undertaking division of Respondent No.1 Company, no information whatsoever has been furnished in this petition. I say that except the bare information of all types of liabilities, dues and obligations, there is no real information, which is pertinent to the scrutiny of the said scheme. The State Bank of India, is therefore, unable to take a view in the matter. It is not clear as to what will be the situation with regard to the outstanding debts of the State Bank of India and what will happen to it after the implementation of the said scheme. I say that according to the terms and conditions,under which the Petitioner Company has obtained from the bank, the various facilities, it is expressly agreed that the Petitioner Company as well as the 1st respondent Company shall not, without prior reference to the bank, effect any change in the said Company's capital structure and/or formulate any scheme of amalgamation or reconstruction. I say that it was on the basis of these terms and conditions, the banking facilities were accorded to the Petitioner Company. I say that, therefore, the Petitioner Company and/or Respondent No.1 Company cannot violate the terms of the said agreement and cannot propose before this Hon'ble Court any scheme of amalgamation or reconstruction. I say that the Baroda Branch of the State Bank of India by various letters had advised the Petitioner Company as well as Respondent No.1 Company that the proposed scheme of reorganization should not be put through till such time as Bank's approval is obtained. I say that the branch had asked the Petitioner Company vide its letter dated 8th July, 1956 to furnish us the information and date requiring the Swastik

Undertaking Division. I say that no information has been furnished to the State Bank of India by the Petitioner Company. I say that the Petitioner Company has been selling their

products to Swastik Undertaking of Respondent No.1 Company and the bill drawn by the Petitioner Company on Swastik Undertaking of Respondent No.1 Company are accepted by that undertaking, but, the bank has been having difficulties in realising these bills on due dates. I say that as already stated hereinabove, the bills aggregating about Rs.50 lacs were due from February 1986 onwards and they have been dishonoured by non-payment. Even the Swastik Undertaking of Respondent No.1 Company has not honoured their commitments. I say that under these circumstances, if the Petitioner company is allowed to take over the Swastik Undertaking of Respondent No.1 Company, it would amount to the Petitioner Company surrendering its right to the debts.

(Emphasis are supplied by us)

Then in para No.35 he has further deposed as under :

"I say that the Auditors of the Company has stated that if Respondent No.1 Company had provided for depreciation as per those recommendations, the charge for depreciation would have been more by Rs.392.98 lacs for the year and thus the Respondent No.1 company's loss for the year is under-stated by Rs.392.98 lacs, as well as the net value of the assets is over-stated by the same amount. I say that as reported by the Auditors of Respondent No.1 Company, the company has not made provision for depreciation and advances considered doubtful which is a substantial amount.

(Emphasis are supplied by us.)

Then in para No.43 he has further stated on oath as under

"I have stated hereinabove that the Petitioner Company in para 23 states that the secured creditors of the Petitioner Company has agreed, in principle, to the proposals of the scheme and in course of time, the Petitioner Company hopes to receive its consent. I emphatically deny the same. I say that the State Bank of India is a secured creditor of the Petitioner Company and the Bank has not agreed,

in principle, to the proposed scheme. On the contrary, the Bank has written various letters informing the Petitioner Company that the proposed scheme of reorganization should not be put through till such time the approval of the Bank is obtained. I say that the Petitioner company has not cared to give complete information with respect to the proposed scheme and its effects to the Bank as well as to this Hon'ble Court in this petition. I say that the information supplied is unsatisfactory and incomplete and not sufficient to scrutinize the proposed scheme. Eventhough I have dealt with many aspects of the financial implications hereinbefore.

(Emphasis are supplied by us.)

10. At annexure 34 there is affidavit of Shri Deepak Jyoti Biswas, Regional Director, Company Law Board, Western Region. He has stated in para No. 5 as under :

"The same paras 7 (a) (i) and 7 (b) (i) state that Sarabhai Surfactants Ltd. (Whitco Ltd.) and SEL shall execute promissory notes of the aggregate value between Rs.9,23,20,000/- and Rs.8,06,00,000/-. It is not understood as to why the transferor company is accepting promissory notes of such huge amount. There is no explanation forthcoming as to why the shares of the value of promissory notes would not have been allotted to the members of Ambalal Sarabhai Enterprises Ltd. Further the acceptance of promissory notes by the transferor company may result in litigation between the transferor company and transferee company ; not to say of the considerable amount that the transferor company may have to spend in litigation for the recovery of the amount. Further the promissory notes constitute only paper security and the advances are not backed by any valuable security so as to ensure the recovery of the amount.

(Emphasis are supplied by us)

11. Shri P.N.Shah, a Director of the Petitioner-Company ASE has filed his affidavit at annexure 36 , dated 30-3-1987. In this affidavit which is filed by way of rejoinder to the affidavit of Biswas, he has stated as under :

"I deny that the promissory notes constitutes only paper security nor are backed by any valuable security except the promissory note which would result into litigation amongst transferor and transferee companies. In the context of the admitted fact that the transferor and transferee companies are inter-related undertakings, I submit that the apprehensions of litigations between the said companies are entirely misplaced and is an attempt to create objections for the sake of it without raising any substantial objections.

But there is no explanation given by the petitioner as to why the shares of the value of the promissory notes were not being allotted and why the transferor company was accepting promissory notes of huge amount.

12. Priyavadan Jivabhai Desai, Secretary of Polyolefins Industries Ltd. has filed his affidavit on 20-1-87 which is at annexure 29. He has stated in para No.2 (b) as under :

"The intention behind the said scheme of arrangement is totally different than shown in the said scheme and the above petition. The said scheme of arrangement is a fraud upon the shareholders, creditors and financial institutions. The Petitioner has in the above petition, in the said scheme of arrangement and in the notices issued to shareholders, creditors and financial institutions suppressed true and correct facts with regard to the financial position of the Petitioner and the true state of affairs of the Petitioner. The Petitioner has made statements therein which are not supported by any evidence."

(Emphasis are supplied by us)

Then he has further stated in para 2 (c) that there are discrepancies between the figures given in the Explanatory Statement and in the balance sheet of ASE and stated that there is no explanation as to how there were those discrepancies and then he goes to state para 2 (f) as under :

"The grounds mentioned in the Scheme of

Arrangement for separation of 3 Divisions of the Petitioner are not genuine. The grounds mentioned in the Petitioner for such separation are also not genuine. The reason for such division is to save the petitioner from being wound up on account of heavy losses and heavy liabilities by transferring the losses and liabilities by transferring the losses and liabilities and fictitious assets to other companies, so that ultimately the Petitioner may survive. In the entire scheme of arrangement, the Petitioner has not shown as to how three separated divisions will be able to manage the respective divisions transferred to them the nature of finance available to such separated divisions, the persons in management or such divisions, whether it is possible to subdivide and run the said divisions separately and independently of each other etc.

(Emphasis are supplied by us)

He further states in are 2(g) and 2 (h) as under :

2(g) The Scheme of arrangement appears to have been based on the financial position of the Petitioner as on 30-6-1985. The figures mentioned in the Scheme are also based on the financial position of the Petitioner as on 30-6-1985. The financial position of the Petitioner has substantially changed since then i.e. within a year and a half after the year of the company ending on 30-6-1985 and the Petitioner has incurred huge losses. There has been change in the assets, contracts etc. of each of the said divisions. It is therefore not possible to implement the Scheme of Arrangement by this Hon'ble Court based on the figures given by the Petitioner in the Scheme of Arrangement and the Exlanatory Statement thereto.

2 (h) As per the scheme of Arrangement, ASL is required to execute a Promissory Note in favour of the Petitioner, in the sums varying between Rs.4,90,80,000 and Rs.4,31,00,000. I say that SSL after transfer of Swastik undertaking will not be in a position to pay the huge liability of more than Rs. 4 crores for which a promissory

note is sought to be executed by SSL in favour of the Petitioner. In fact the Petitioner will not be in a position to recover the said amount from SSL. It is not shown as to how the amount of more than Rs 4.0 crores will be paid and/or secured by SSL in favour of the Petitioner. Obviously the intention of the Petitioner is to transfer its assets to SSL against a promissory note of more than Rs.4.0 crores. It is not known what is the real worth of the assets intended to be transferred by the Petitioner to SSL.

In para 2 (r) he has further stated as under :

The peracute of the balance sheets of the Petitioner, SSL and SEL sought to be presented in the scheme is totally incorrect and misleading. The Petitioner has no goodwill of any nature. Even then, the Petitioner has shown Rs.22.94 crores as value of goodwill. The value of the fixed assets of SSL is shown on the footing that the scheme of amalgamation of SHIP and SMCEPL has been carried out. In fact this is not so. The losses as aforesaid of the Petitioner is not Rs.9.0 crores but more than Rs.75.0 crores as on 30-6-1985. It is absolutely necessary for the Petitioner to put before this Hon'ble Court the financial position of the Petitioner as on the date of the hearing of the Scheme of Arrangement by this Hon'ble Court."

(Emphasis are supplied by us)

In para 2 (u) he has stated as under :

"Similarly sanction for transfer of industrial licence and several other statutory requirements will also have to be carried. Without such permissions the Scheme of Arrangement cannot be sanctioned. The Scheme of Arrangement is silent as to the permission under the IDR Act to be ontained by the petitioner. The Scheme of Arrangement also does not mention as to the negotiations which have taken place with the financial institutions and other secured creditors and how and in what manner the financial institutions and secured creditors will agree to the proposed transfer of assets and security by the Petitioner, SSL and SEL.

(Emphasis are supplied by us)

Para 2 (x)

"By such reduction and sanctioning scheme of arrangement, the rights of the creditors of the Petitioner including that of the Company will be adversely affected and the Company and other unsecured creditors of the Petitioner will not be able to realize their dues. The assets of the Petitioner after such reduction admittedly will not be sufficient to safeguard the interests of the creditors. This Hon'ble Court therefore in the interest of the creditors of the petitioner will not sanction reduction of share capital and the Scheme of Arrangement."

13. There is affidavit of Tahilramaney Pooran, the power of attorney holder of Ciba-Geigy Ltd., dated 23rd April, 1987 at annexure 38. In the said affidavit he has stated as under :

"It appears that in the present proceedings the Petitioner represented that there were trade creditors of the Company consisting of a fluctuating body who are paid at regular intervals. Further the trade creditors of their respective undertakings and they would continue to receive their payments at regular intervals from the concerned Companies. Therefore the Petitioner requested for directions for preparation of the list of creditors to be dispensed with. It also appears that for the same reason the Petitioner avoided calling of a meeting of unsecured creditors though there are a large number of unsecured creditors vitally interested in the scheme and who are vitally and adversely affected by the scheme. Moreover the debt due to Ciba Geigy Limited has been shown in the balance sheet as on 30-6-85 as Rs.33,34,000/-. This balance sheet does not give correct picture of the amount due in as much as the amount due on the basis of the current rate of exchange was and is over 4 times the amount mentioned as is apparent from Exhibit 1. Looking at the large body of unsecured creditors which include not only the trade liabilities but also depositors and the persons like Ciba Geigy Limited who have given term loans it was incumbent on the Petitioner to apply for calling a meeting of the unsecured creditors also. The Petitioner has allegedly obtained consent of the

secured creditors has also called a meeting of all bond/ debenture holders who also are secured creditors. Obviously, unsecured creditors will be affected more than the secured creditors and no meeting was called to ascertain their wishes at all."

14. Mr. P.N.Shah, a Director of the Petitioner Company has filed his affidavit dated 27th April, 1987 in reply to the affidavit of Shri Pooran of Ciba Geigy Ltd. In the said affidavit, the claim of Pooran that in the balance sheet, the dues of his Company were shown as only Rs.33,34,000/though the same was 4 times more than that is not specifically denied. In the said affidavit only claim in para No.4 was that on the facts and circumstances of the instant case, it was not at all necessary to convene the meeting of the unsecured creditors more particularly of depositors and unsecured creditors like Ciba Geigy Limited as there was compromise with the creditors. But in view of the claim of Mr. Pooran that in the balance sheet the correct figures were not shown and further the position of petitioner Company as well as the other company shown as only they appeared on 30th June, 1985 and not till date of the petition, there was no justification for not convening the meeting of the secured as well as unsecured creditors because there is a statutory obligation on the court under the provisions of sub Section 2 of Section 391 to ascertain as to whether the amalgamation and arrangement in question was in the interest of creditors and shareholders and whether they were in fact consenting to such a scheme. In view of the affidavits of Shri Biswas, Shri Pooran and Shri Desai of Polyolefins Industries Ltd. the dispensing with the meeting under Rule 48 of the unsecured creditors as well as secured creditors was not justified. The explanation given by Shri Shah in his affidavit at Annexure 39 for dispensing with the said meeting could not be believed and accepted.

15. There is another affidavit of Tahilramaney Pooran, the Power of Attorney Holder of Cibe-Geigy Ltd. at annexure 41, dated 20th May,1987. In this affidavit he has contended that the Petitioner Company is unable to discharge its liabilities and in order to support his claim he has given certain grounds described as examples in his affidavit. Example (a) stated by him is as under:

"The petitioner Company has suffered huge

losses during the period subsequent to 30th June, 1985. I say that the Petitioner Company has not prepared and filed its balance sheet and profit and loss account for the year ending 30th June, 1986. I say that non-filing of balance sheet for the year 30th June, 1986 is not only in breach of provisions of Companies Act, but has been done with an object to suppress the true and correct financial position of the Company after 30th June,1985. In any case the result is that the latest financial position is not known and this Hon'ble Court, while deciding to sanction or refuse to sanction a scheme in May 1987 has no information relating to the last 2 years.

(Emphasis are supplied by us)

In para : 5 he has stated as under :

"I say that S.S.L. after transfer of Swastik Undertaking will not be in a position to discharge the huge liability of more than Rs.4 crores for which Promissory Note is sought to be executed by S.S.L. in favour of the Petitioner. I say that the Petitioner Company will not be able to recover the said amount from S.S.L. I say that no particulars are given in the Scheme of Arrangement as to how the payment of Rs.4 crores is secured. I say that it is, therefore, very clear that the Petitioner Company wants to transfer its assets to various other Companies with a view to defraud its shareholders, secured and unsecured creditors and public at large.

I say that the present arrangement is a calculated attempt on the part of the Petitioner Company to transfer its assets and deprive or defraud the creditors and make them run to recover their dues.

I say that it is pertinent to note that the Petitioner Company is admitting in paragraph under reply that the Petitioner is incurring losses for a period of last 3 years and its liquidity position is affected. I deny that the said liability position is allegedly temporary phase as alleged or otherwise.

16. The claim made in the above quoted depositions on affidavit of various persons that the petitioner has not supplied the audited accounts after 30-6-85 is not at all denied by the petitioner's witness, Shri P.N.Shah who has filed four affidavits.Similarly the claim of those deponents that the petitioner and it's divisions have suffered loss for 1 1/2 years prior to the date of the petitions in question is not also disputed by him. He only claims that it is only temporary phase. But without stating how they will overcome it. No explanation is forthcoming as to why the latest audited statement of accounts is not filed.

17. In the letter dated 25th October, 1986 addussed by the ASE to Shri Premjit Singh, Chairman and Managing Director, Bank of Baroda, has stated therein that the scheme of reorganization of ASE has been approved by shareholders and bond/debenture holders on 30th April, 1986 and the Debenture Trustees have also extended their consent for the Scheme,and, therefore, the petition has been filed in the High Court of Gujarat for approval of the Scheme. Annexure 15 at page 898 is a letter issued by Chief Manager, Bank of Baroda to all consortium Banks on 22-11-86. Thereafter, Canara Bank informs the Financial Controller of ASE by its letter dated 26th December, 1986 that they have approved the scheme of reorganization of ASE subject to all other member banks agreeing to the same to fall in the line with the Lead Bank. To the same letter dated 24th December,1986, at annexure 16 at page No.901, the State Bank of Saurashtra, vide its letter dated 10-2-87 has informed on the same line, but has asked to inform them as to why the entire liability for payment of all Debentures has been taken up by ASE Ltd and the reasons of the said decision be informed to them. Uco Bank by its letter dated 19-5-87, at annexure 16 at page No.903 has informed in the same manner. But the appellant-Central Bank of India has informed Ambalal Sarabhai Enterprises Ltd. by its letter dated 23rd December, 1986 as under :

> We refer to the correspondence resting with your letter dated November 19, 1986, on the above subject. We are pleased to inform you that we have considered your proposal and accordingly, give our consent to the instructuring/re-organisation scheme of the Company, provided the Principal Company in the ASE Group, after re-structuring, gives its guarantee for the outstanding dues of the Division-Swastik Household And Industrial Products (SHIP).

It is further stipulated that the principal company (ASE) should also given an undertaking to Bank that the new Company (reorganized) will not seek any concessions or ask for funding etc., and in the event of the new Company continuing to incur losses, the same would be made up by the quaranteeing Company.

Kindly send us your letter of concurrence to the above effect at an early date.

18. The Bank of Baroda has informed by its letter dated 19th December, 1986 as under :

(1) Bankers to have pari parsu charge on the fixed assets presently charges to financial institutions to additionally cover Working Capital facilities to be shared by proposed M/S. Sarabhai Surfactants Ltd.

(2) Company to introduce some long term funds.

(3) Cross guarantee of different companies as also guarantee of parent Company to made available for various facilities to be sanctioned to the respective new companies.

(4) Personal guarantees of directors (other than professional directors).

(5) SSL & SEL not to pay interest to ASE on unpaid purchase consideration and to retain the same in business.

We observe that you have as far not furnished clarifications/consent on the above issues.

We also draw your attention to the following views of one of the member banks with regard to reorganization scheme :

(1) The viability study of sick units/companies should be got done by the company. In case the units are not viable, the company should make arrangements to liquidate various liabilities and/or the plans to liquidate those funds be inquired into.

(2) The payment burden of instatements/interest by the proposed company towards the parent company be reduced by way of deferring instatements or by discharging purchase consideration by way of equity instead of loan component.

Would you look into the matter and send us your rely expeditiously.

19. The respondent has informed the Deputy General Manager of Bombay General Office, Central Bank of India by letter dated 3rd January,1987 as under :

We refer to your letter No. R2C: IIL :86/2253, dated December 23, 1986 according to your approval for the reorganization of ASE, subject to certain stipulations mentioned therein.

In this connection, we confirm our agreement in principle , for providing the guarantee of ASE (restructured) for the outstanding dues of Swastik Division (being reorganized in to Sarabhai Surfactants Limited) with your Bank till such time alternative arrangement are made. It is not the intention that SSL should seek any concessions from the Bank in respect of its dues or to seek any additional funding beyond the present borrowings till such time as it is able to satisfy the eligibility norms prescribed by the Bank.

In para-2 of your letter, you have stated that the event of SSL continuing to incur losses, the same should be made up by ASE (Reconstructed). We hope the purport is that ASE will continue to support SSL after reorganization till any other arrangements are made. This may kindly be confirmed.

20. Similar letter is sent by the Company SSL on 12-2-1987 to the General Manager of Bank of Baroda, which is at page 907. In the said letter also there are following averments :

However, to meet any temporary difficulties, it may be possible to agree for temporary postponements in payment of interest till such time as financial health of the new companies are satisfactory, or other alternative arrangements acceptable to the banks are made.

If the above correspondence is taken into consideration, then it becomes very difficult to accept the statement made by Mr. Shah in his affidavit dated, 17th June, 1987 which is at annexure 42. In para No.12 he has stated as under :

> The Financial Institutions and Banks have examined the Scheme and none of them have objected to this Arrangement.

In the petition it was stated that the petitioner have made arrangement with their secured creditors including the present appellants. When the court has to hold that the arrangement or amalgamation of the company is in the interest of the shareholders and creditors, it was incumbent on the petitioner to state in words what arrangements were made by them for secured creditors and what was agreement made between them and secured creditors. Mere vague statement without disclosing what is the arrangement ought not to have been accepted by the learned Company Judge because there is statutory obligation on the Company Judge to satisfy himself that the arrangement or amalgamation is in the interest of all and for that satisfaction, necessary material ought to have been placed before him and he ought to have insisted. Had the petitioner stated that the secured creditors-banks had agreed to give their consent to arrangement/ amalgamation on ASE continuing to be the guarantor of the new company, then the court would have definitely incorporate that term of the agreement between the secured creditors and the company in the final order and final scheme so as to make it proper, workable and acceptable to the secured creditors. Then alone it would be in the interest of the shareholders and creditors.

21. From the above discussion, it would be quite clear that the petitioner company had not produced all the material facts relating to the company such as latest financial position of the company, latest Auditor's Report and the accounts of the company. Though the company had incurred heavy losses, they were not disclosed. Similarly the agreement between the secured creditors-banks and the principal company ASE was not also disclosed. Thus, there was no proper compliance with the provisions of sub section 2 of Section 391 of the Companies Act, 1956, and, therefore, the learned Company Judge ought not to have approved and sanctioned the scheme in question. The above quoted and discussed

material ought to have been considered by the learned Single Judge. Had he taken into consideration the above quoted material into consideration, then definitely he would not have accorded sanction and approval to the arrangement and amalgamation scheme. Therefore, in view of the above quoted material and in view of the above discussion, the learned Company Judge ought not to have approved and sanctioned the scheme in question.

22. It is urged before us on behalf of the respondents that the appellants wants the ASE to furnish guarantee and to make payment of the dues of WHITCO in which SHIP has merged and that therefore it would not be proper and just to refuse to sanction the arrangement and amalgamation scheme. It is further submitted that for that purpose the appellants have to take a separate proceeding, they cannot insist for rejection of the scheme, when the learned Company Judge while sanctioning the scheme had not laid down any term that ASE must be a guarantor for the dues of WHITCO even after its amalgamation. When the scheme does not mention that ASE is responsible for the dues of the appellants as a guarantor, their scheme is not to be rejected for ASE's refusal to be a guarantor. But we are not interfering with the sanction and approval granted by the learned Company Judge because of the refusal of the respondent ASE the claim of the appellants. We are interfering with the order of the learned Single Judge on the basis of the provisions of Section 391 of the Companies Act, 1956. The learned advocate for the respondent has cited before us the cases of In re SUSSEX BRICK CO.LTD. 1960 Vol. XXX COMPANY CASES, 536, ANSAL PROPERTIES AND INDUSTRIES LTD, In re, 1978 Vol.48 COMPANY CASES, 184, In re BHAVNAGAR VEGETABLE PRODUCTS LTD. 1984 Vol.55 COMPANY CASES, 107 and In re COIMBATORE COTTON MILLS LTD. AND LAKSHMI MILLS CO.LTD.,1980 Vo. 50 COMPANY CASES,623. It must be fairly stated that in the last two cases, the principles as regard how a scheme is to be considered and approved by the court are laid down. About the principles laid down in the cases, there could not be any dispute. In the case of In re COIMBATORE COTTON MILLS LTD AND LAKSHMI MILLS CO.LTD., 1980 Vol. 50 COMPANY CASES, 623 the learned Single Judge of Madras High Court has observed as under :

> It is the function of the court to see that the scheme as a whole, having regard to the general conditions and background and object of the scheme, is reasonable one and if the courts so finds it, it is not for the court to interfere with the collective wisdom of the shareholders of

> the company. When once the court finds that the scheme is a fair one, then it is for the objector to convincingly show that the scheme is unfair and that, therefore, the court should exercise the discretion to reject the scheme, notwithstanding the views of a very large majority of the shareholders that the scheme is a fair one. If the court is of the opinion that there is such an objection to it as any reasonable man would say that he would not approve of it, then the court may refuse to confirm the scheme.

If the above principles are applied to the facts of the case before us, then our interference with the discretion used by the learned Company Judge could not be said to be improper or illegal. In the instant case the petitioner comes before the court with a request to dispense with the holding of the meeting of secured as well as unsecured creditors, by saying that there is an approval of them to the said scheme. But when unsecured creditors come before the court and file objections to the approval and sanction of the said scheme, the petitioners satisfy their dues, works out their dues and thereby see that they do not remain on the scene to oppose their scheme. The petitioners mention in the petition and also affirm on the affidavit that there is in fact an arrangement with the secured creditors-banks and banks have approved the said scheme but without disclosing what is the arrangement and agreement between the secured creditors-banks and the petitioner though the petitioner promise the bank that petitioner ASE will continue to be the guarantors of WHITCO itself before the sanction and approval of the Scheme of arrangement/amalgamation. When the amalgamation is sanctioned by the learned Single Judge, he puts up his hands and denies its liability to satisfy the same. By that act ASE has disclosed that it has played fraud on the court.The petitioner does not file the latest statement of audited accounts and balance sheet of the company before getting the approval and sanction of the learned Single Judge and thereby there is non-compliance of the mandatory provisions of proviso to sub section 2 of Section 391. Therefore, in these circumstances, we are unable to hold that the scheme in question is a fair and just and that in the interest of all the persons. In the case of In re ANSAL PROPERTIES AND INDUSTRIES LTD., 1978 Vol. 48, COMPANY CASES,184 the learned Single Judge of the Delhi High Court has approved the scheme without calling the meeting of the creditors because in that case there were only two creditors. One

who had filed opposition and another was the transferee company. The transferee company was holding the majority of the liabilities of the transferor company. Transferor company was owing almost all dues except an amount of Rs.1,600/to the transferee company and as there was agreement for the scheme by the transferee company and when the dues of the other creditors were only 1,600/-, it was felt by the learned Single Judge that the scheme should be approved and sanctioned. In the instant case, the transferee company is not a creditor of transferor company. On the contrary, the present appellant and many other persons are the creditors and dues of the transferor company are in crores and lacs. Therefore, that case will not be also applicable to the case before us. In the case of In re SUSSEX BRICK CO.LTD. 1960 Vol.XXX,COMPANY CASES,536 there was approval to the scheme by 9/10 of the shareholders, and, therefore, the objections by 1/10 was not considered. In the instant case, the objections are by the secured creditors and others. On account of the fraud played by the original petitioner on them and on account of the fraud played by the original petitioner on the court in getting approval and sanction they could not come before the trial court. And now they have raised the objection for non-fulfillment of the statutory obligation lying on the petitioner in getting the approval and sanction for the scheme.

23. It is contended before us by the learned advocate for the respondent that as the present appellant had given approval for the scheme, the liability of ASE will stand extinguished and in support of that submission the cases of STATE BANK OF SAURASHTRA V. CHITRANJAN RANGNATH RAJA AND ANOTHER, A.I.R. 1980 S.C.,1528, AMRIT LAL GOVERDHAN LALAN (dead) by his legal representative, v. STATE BANK OF TRAVANCORE AND OTHERS, A.I.R. 1968 S.C.,1432, NARAYAN RAMCHANDRA BHAGWAT V MARKANDYA TUKARAM AND ANOTHER, A.I.R. 1959, BOMBAY, 516, SREE MEENAKSHI MILLS LTD AND ANOTHER V. RATILAL TRIBHOVANDAS THAKAR A.I.R. 1941 BOMBAY, 108, BABU RAO RAMCHANDRA RAO AND OTHERS V. BABU MANAKLAL NEHRMAL, A.I.R. 1938 NAGPUR, 413 and SETH PRATAPSINGH MOHOLALBHAI AND ANOTHER V. KESHAVLAL HARILAL SETALWAD AND ANOTHER, A.I.R.1935 PRIVY COUNCIL,21 are cited before us. All these cases cited before us are the cases under Sections 133 and 142 of the Contract Act as regards the liability of the sureties and the extinguishment of the liability of the sureties. In these cases, it has been held that if there is a variance in the original contract of guarantee without the consent of the surety, the surety will stand discharged. But we are unable to hold that those cases have got any bearing

on the material before us. No doubt, it was tried during pendency of appeals as well as before filing appeals to see that the respondent ASE accept the claim by accepting that ASE as the guarantor of transferred company and the dues of the appellants are satisfied. But that suggestion was made and offers were given by the appellant to the respondents in order to settle the dispute between the parties and those suggestions had come in view of the provisions of Section 392 of the Companies Act. Under Section 392 of the Companies Act, the court has got powers- unlimited powers to supervise and carry out the arrangements which were there while passing the order under Section 391. We have already quoted the correspondence between the Banks and the respondent ASE. The said letters clearly indicates that there was an arrangement of ASE becoming the guarantor and taking over the liabilities to satisfy the dues of the Banks and ASE had accepted the same in the correspondence made by ASE with the Banks. No doubt, there is no specific mention of the said arrangement by way of a statement in the amalgamation arrangement scheme. But in the original petition as well as in the affidavit filed by ASE, it was agreed and said that ASE had an understanding/ an agreement with the Banks who were secured creditors. But merely because of the said attempts made under Section 392, it could not be said that we are going to decide the claims of the appellants against ASE as a guarantor. It must be remembered that the approval of the Banks was on condition that the ASE is to continue as a guarantor even after the approval of the scheme and ASE had accepted that condition. Hence the Respondent on refusing their position to continue as guarantor can not come forward and say that the appellants have approved the scheme in question. They are prohibited to contend so by Principle of Estoppel. Hence the respondents cannot take the aid of Sections 133, 134 and 135 of the Contract Act by not accepting the term of consent namely that they were to continue as guarantors even after the new scheme.

24. The main contention raised on behalf of the respondent is that the appellants are contending that the order in question is obtained by playing fraud and that claim of the appellants could not be entertained in the appeal and that they will have to go for a separate proceeding by way of filing a suit to challenge the order. We would like to mention here that when the appeal is admitted under the law, appeal amounts to the continuation of the original proceeding. Therefore, when the appeal is the continuation of the original proceeding, it is open for a party to show that the party

which has obtained an order or seeking an order has played or playing fraud on the court. When there is an allegation of fraud, it must be always remembered that there could not be a direct proof of fraud. The fraud will have to be inferred from the various circumstances which have to be brought on record by a party. Each circumstance may not be sufficient to prove a fraud, but all the circumstances taken together may indicate the fraud. It is always open to a party to show to the court that the party which is seeking an order in his favour is playing fraud on the court. Similarly, it must be also mentioned that the provisions of Section 391 and 392 confirm wide powers on the courts and those powers are exercisable not at the time of making order under section 391 by also at any time thereafter because the courts have wider statutory powers and responsibility in order to see as to whether the working of Arrangement Scheme is in the best interest of the persons who are to be principally effected i.e. the shareholders and the creditors, and, therefore, subsequent conduct of the respondent No.1 ASE after passing of the order by the learned Company Judge on 24th December, 1987 could be taken into consideration by this court while considering these appeals. We have quoted above the correspondence between ASE and the Banks. The same clearly shows that the Banks had laid a condition that ASE to continue as guarantor even after the approval of the Arrangement/Amalgamation Scheme till some arrangement to the satisfaction of the Banks is made. When ASE had showed in the affidavits in support of the petition as well as in the petition that they have obtained consent of the secured creditors- the Banks, it is obvious that the consent is on account of ASE accepting to be a guarantor even after the approval of the Scheme . But when ASE refuses that position after the approval, it is a clear case of ASE playing fraud on the court as well as the Banks.

25. It was vehemently urged before us that the appellant will have to go before a regular court to establish its claim of fraud and that claim could not be considered in these appeals. At the cost of repetition it must be stated that the appeal is continuation of the original proceeding, it is always open for a party to show that the opposite party is playing fraud on the court and is misleading the court and trying to obtain order in his favour. For that purpose it is not necessary for him to take a separate proceeding. Therefore, we are unable to accept that contention of the respondent. In our opinion, by not producing the latest audited accounts and balance sheet of the company and by

not putting on record the actual agreement which took place between ASE and the Banks-secured creditors and by making a false statement that secured and unsecured creditors have approved the scheme, the respondent had played fraud on the court. We therefore, hold that the order passed by the learned Company Judge was obtained by the respondent by playing fraud.

26. At the time of arguing these appeals, the learned advocate for the respondent had made it clear that it was not at all possible for the respondent to have rethinking on the said scheme and to get reapproval for the said scheme. Therefore, in the circumstances, there is no alternative other than rejecting the Scheme of Arrangement and Amalgamation. Thus, we hold that the present appeals will have to be allowed and the schemes put forth by the petitioner in Company Petitions Nos. 90/86 and 91/86 will have to be rejected.

27. But before passing the final order in these appeals, it is necessary to state that the order which we have quashed and set aside is of 24th December, 1987. In pursuance of the said order, the respondent- ASE has committed certain acts. Therefore, after the arguments were over, further additional affidavit was filed on behalf of the respondent No.1 on 1st January, 1997, suggesting therein certain alternatives to satisfy the claim of the appellants. But the said suggestions made in the said additional affidavit of Mr. C.V.S. Narayanan, Director of ASE is rejected by both the appellants as well as the respondent No.2. We have also perused the said additional affidavit which contains the alternatives. The alternatives suggested therein will require again a fresh petition for amalgamation and arrangement of ASE, SSL and HARYANA CONTAINERS LTD.-another subsidery of ASE. Therefore, we also do not find that the said alternatives suggested by the respondent No.1 ASE is acceptable.

28. However, taking into consideration the fact that the order which is to be quashed and set aside by allowing these appeals is passed on 24-12-87 and that ASE has acted upon the said order, we would like to give one more and final opportunity to the ASE to reconsider the claim of the appellant and to make a proposal which is acceptable by the present appellant. If the original petitioner-respondent ASE happened to putforward any proposal or settlement satisfying the claim of the present appellant before us within two months from today and appellant before us file an affidavit supporting the claim of the respondent-ASE before us, then the appeals will stand disposed of on account of the compromise and

settlement between the parties out of court with no order as to costs and the order of the Company Court shall stand accordingly confirmed. But in case no such proposal for settlement satisfying the claim of the present appellants before us is made/arrived at by respondent ASE within two months from today then both these appeals will stand allowed and the orders passed by the learned Company Judge in Company Petitions Nos. 90/86 and 91/86 on 24-12-87 will stand quashed and set aside. In the circumstances of the case parties are directed to bear their respective costs.

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